

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2159 - SB 2621

February 4, 2018

SUMMARY OF BILL: Enacts the “Elderly and Vulnerable Adult Protection Act of 2018” to enhance crimes committed against the elderly or vulnerable adults.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – Net Impact – \$3,125,800 Incarceration*

Increase Local Expenditures – Less Than \$114,700**

Assumptions:

Current Laws on Elder Abuse

- Title 71, Chapter 6, Part 1 is titled the Tennessee Adult Protection Act. Tennessee Code Annotated § 71-6-117 and -119 prohibit the knowing or willful abuse, or neglect of an adult. Under Title 71, Chapter 6, Part 1, “adult” is defined as a person over 18 years of age “who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others.” The proposed legislation creates separate definitions for “elderly adult” and “vulnerable adult”, but the new definitions protect substantially the same population as the current definition of “adult” under the Adult Protection Act.
- Chapter 466 of the Public Acts of 2017 enacted the Elder and Vulnerable Adult Protection Act. This act established new procedures relative to registering persons convicted of elder abuse, and it created a new financial exploitation offense.
- The proposed legislation creates new offenses that are similar to the current abuse and neglect offenses under the Adult Protection Act. The proposed legislation, however, changes the felony classification of some of these offenses and creates some new offenses. These changes, outlined below, will impact state incarceration costs.

Elder or Vulnerable Abuse

- Tennessee Code Annotated § 71-6-117 prohibits anyone from knowingly, other than by accidental means, abusing an “adult” as defined by Tenn. Code Ann. § 71-6-102.

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- The proposed legislation creates a new offense for knowingly abusing an elderly or vulnerable adult. Under the proposed legislation, abuse against an elderly adult is a class E felony (currently a class D felony), and abuse against a vulnerable adult is a class D felony (currently a class D felony).
- The proposed legislation will decrease state incarceration costs.
- Statistics from the Department of Correction (DOC) show an average of two admissions for abuse under Tenn. Code Ann. § 71-6-117 each year over the last three years. The three-year average is used because there has been an increase in admissions over the last three years. The three-year average better represents the current number of admissions per year.
- Tennessee Code Annotated § 71-6-117 covers abuse, neglect, and exploitation. It is assumed that one-third of current admissions ($2 \times 0.333 = 0.67$) are attributable to abuse.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect this admission.
- The DOC has insufficient data on the average time served for persons convicted under Tenn. Code Ann. § 71-6-117. The average time served by felony class will be used.
- The average time served for Class D felony is 2.15 years (785.29 days). The average time served for a Class E felony is 1.31 years (478.48 days). The proposed legislation will result in one offender per year serving 0.84 years (306.81 days) less than under current law.
- According to the DOC, the average operating cost per offender per day for calendar year 2018 is \$71.08.
- The proposed legislation will result in a decrease in state incarceration costs of \$21,808 (1 admission \times 306.81 days \times \$71.08) per year.
- The proposed legislation will not impact incarceration costs for vulnerable adults because the felony classification is unchanged.

Elder or Vulnerable Aggravated Abuse

- Tennessee Code Annotated § 71-6-119 prohibits anyone from knowingly physically abusing an impaired adult if the abuse results in serious mental or physical harm.
- The proposed legislation creates a new offense for abusing an elderly or vulnerable adult and (a) the abuse results in serious psychological injury or serious physical harm; (b) the abuse involves the use of a deadly weapon; (c) the abuse is committed by two or more persons; or (d) the abuse causes serious bodily injury.
- An offense under (a) would be the same offense and classification as abuse under Tenn. Code Ann. § 71-6-119. An offense under (b) or (d) would constitute aggravated assault, but the new offense would enhance the felony classification one level to a class B felony.
- An offense under (c), punished as a class B felony, is the same classification as aggravated assault would be under Tenn. Code Ann. § 39-12-302 if committed by two or more persons acting in concert.
- The proposed legislation will increase state incarceration costs for offenses committed under (b) and (d).

- Statistics from the DOC show an average of 998.4 admissions per year over the last ten years for aggravated assault. It is assumed that 3.4 percent ($998.4 \times 0.034 = 34$ admissions) of current admissions are committed against an elderly or vulnerable adult and involve the use of a deadly weapon or result in serious bodily injury.
- The proposed legislation will result in 34 admissions being punished one classification higher under the new aggravated elder abuse offense.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for four ($34 \times .1178$) additional admissions for a total of 38 ($34 + 4$).
- Statistics from the DOC indicate that the average time served for aggravated assault is 3.34 years. The average time served for a class B felony is 6.39 years. The proposed legislation will result in each admission serving an additional 3.05 years (1,114.01 days).
- According to the DOC, 47.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($38 \text{ offenders} \times .471 = 18 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 20 offenders ($38 \text{ offenders} - 18 \text{ recidivism discount}$) serving an additional 3.05 years (1,114.01 days) for a total of \$79,184 per offender ($\$71.08 \times 1,114.01 \text{ days}$). The cost for 20 offenders is \$1,583,680 ($\$79,184 \times 20$).

Elder or Vulnerable Neglect

- Tennessee Code Annotated § 71-6-117 prohibits anyone from knowingly, other than by accidental means, neglecting an “adult” as defined by Tenn. Code Ann. § 71-6-102.
- The proposed legislation creates a new felony offense for neglecting an elderly or vulnerable adult and a new misdemeanor offense for neglect through abandonment or confinement. Neglect of a vulnerable adult is a class D felony, which is the same classification as the current neglect offense. Neglect of an elderly adult is a class E felony, which is one classification lower than the current offense.
- Though the proposed legislation reduces the felony classification one level for neglect, the definition of “neglect” is broader under the proposed legislation than under current law.
- Tennessee Code Annotated § 71-6-102 defines “abuse or neglect” as “the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person’s health or welfare.”
- The proposed legislation defines “neglect” as the failure to provide care, supervision, and services necessary to maintain the physical and mental health of the elderly or vulnerable adult; the failure of a caretaker to make a reasonable effort to protect an elderly or vulnerable adult from abuse, neglect, or exploitation by others; abandonment through the knowing desertion or forsaking of an elderly or vulnerable adult; or

confinement through the knowing restriction or movement of an elderly or vulnerable adult.

- While abandonment and confinement only apply to the new misdemeanor offense, the failure to make a reasonable effort to protect an elderly or vulnerable adult against abuse, neglect, or exploitation is a much broader definition of neglect. This broader definition will result in additional admissions for neglect.
- Statistics from the DOC show an average of two admissions for abuse under Tenn. Code Ann. § 71-6-117 each year over the last three years. The three-year average is used because there has been an increase in admissions over the last three years, and is most representative of the current number of admissions per year.
- Tennessee Code Annotated § 71-6-117 covers abuse, neglect, and exploitation. It is assumed that one-third of current admissions ($2 \times 0.333 = 0.67$) are attributable to neglect.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect this admission.
- The DOC has insufficient data on the average time served for persons convicted under Tenn. Code Ann. § 71-6-117. The average time served by felony class will be used.
- The average time served for Class D felony is 2.15 years (785.29 days). The average time served for a Class E felony is 1.31 years (478.48 days). The proposed legislation will result in one offender per year serving 0.84 years (306.81 days) less than under current law.
- The proposed legislation will result in a decrease in state incarceration costs of \$21,808 (1 admission x 306.81 days x \$71.08) per year.
- It is assumed that the broader offense of neglect will result in one additional admission each year for neglect.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 1.31 years (478.48 days) at a cost of \$34,010 (\$71.08 x 478.48 days).
- There is insufficient data to reasonably estimate the increase in local incarceration costs resulting from the creation of a new misdemeanor offense. However, it is reasonable to assume that there will be no more than five convictions for misdemeanor neglect of an elderly or vulnerable adult resulting from abandonment or confinement. It is also reasonable to assume that each person convicted will serve no more than 11 months, 29 days (364 days)—the maximum punishment for a class A misdemeanor.
- The estimated 2018 cost per inmate per day for local jails is \$63.00.
- The proposed legislation will increase local incarceration costs by less than \$114,660 (5 admissions x 364 days x \$63.00 per day).

Elder or Vulnerable Aggravated Neglect

- Tennessee Code Annotated § 71-6-119 prohibits anyone from knowingly grossly neglecting an impaired adult if the neglect results in serious mental or physical harm. Willful neglect is currently a class C felony.
- The proposed legislation creates a new offense for neglecting an elderly or vulnerable adult in which (a) the neglect results in serious psychological injury or serious physical harm or (b) the neglect causes serious bodily injury. The proposed legislation classifies

an offense under (a) as the same classification as willful neglect under Tenn. Code Ann. § 71-6-119. An offense committed under (b) is classified as a class B felony, which is one classification higher than willful neglect.

- However, there will be more admissions under (a), because the definition of “neglect” in the proposed legislation is broader than the current definition. Thus, more acts will qualify as aggravated neglect of an elderly or vulnerable adult.
- Statistics from the DOC show an average of one admission every three years for willful neglect.
- It is assumed that the new offense of aggravated neglect will result in one additional class C felony admission every three years and one admission every three years being enhanced because of serious bodily injury.
- The DOC does not have any data on the average time served for willful neglect. The average time served for class C felony will be used.
- The proposed legislation will result in one additional admission every three years for class C felony aggravated neglect. The average time served for a class C felony is 3.28 years (1,198.02 days).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 3.28 years (1,198.02 days) for an annualized cost of \$28,385 $[(\$71.08 \times 1,198.02 \text{ days}) / 3]$.
- The proposed legislation will result on one admission every three years being enhanced one classification to a class B felony. The average time served for a class C felony is 3.28 years (1,198.02 days). The average time served for a class B felony is 6.39 years (2,333.95 days). The proposed legislation will result in each offender serving an additional 3.11 years (1,135.93 days).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 3.11 years (1,135.93 days) for an annualized cost of \$26,914 $[(\$71.08 \times 1,135.93 \text{ days}) / 3]$.

Elder or Vulnerable Sexual Exploitation

- The proposed legislation creates a new offense for knowingly sexually exploiting an elderly or vulnerable adult. The proposed legislation classifies sexually exploiting an elderly adult as a class E felony, and sexually exploiting a vulnerable adult as a class D felony.
- The Tennessee Incident Based Reporting System (TIBRS) (<http://tennesseecrimeonline.tbi.tn.gov/public/Browse/browsetables.aspx>) contains various statistics on offenses committed in Tennessee as well as victim information.
- The offense of “forcible fondling” includes “touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against the person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity”. This offense would constitute sexual exploitation if committed against an elderly or vulnerable adult.
- TIBRS indicates that there have been 867 forcible fondling incidents in 2016 committed against victims over 18 years of age. Current census data only counts disabled, or vulnerable, individuals who are not institutionalized. Because institutionalized

individuals are at a greater risk for abuse and exploitation, the census data is not helpful to this analysis.

- It is assumed that 20 percent (867 incidents \times 0.2 = 173 incidents) of forcible fondling incidents were committed against a vulnerable adult, which includes those with permanent mental or physical incapacities.
- TIBRS reports incidents. These incidents may or may not result in charges being levied against the alleged offender. Further, not all charges will result in convictions.
- It is assumed that the proposed legislation will result in 10 admissions each year for sexual exploitation of a vulnerable adult.
- The average time served for a class D felony is 2.15 years (785.29 days).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on each offender serving 2.15 years (785.29 days) at a cost of \$55,818 ($\71.08×785.29 days). The cost for 10 offenders is \$558,180 ($\$55,818 \times 10$).
- TIBRS indicates that 23 forcible fondling incidents were committed against victims over 65 years of age. It is assumed that the proposed legislation will result in two admissions per year for sexual exploitation of an elderly adult.
- The average time served for a class E felony is 1.31 years (478.48 days).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on each offender serving 1.31 years (478.48 days) at a cost of \$34,010 per offender ($\71.08×478.48 days). The cost for two offenders is \$68,020 ($\$34,010 \times 2$).

First Degree Murder

- Under Tenn. Code Ann. § 39-13-202, first degree murder is the premeditated and intentional killing of another or the killing of another committed in the perpetration of certain enumerated offenses.
- The proposed legislation adds aggravated abuse of an elderly or vulnerable adult and aggravated neglect of an elderly or vulnerable adult to the list of offenses.
- First degree murder is punishable by death, imprisonment for life without the possibility of parole, or imprisonment for life.
- Anyone convicted of first degree murder after July 1, 1995 and sentenced to imprisonment for life must serve no less than 51 years (18,627.75 days) before being released.
- It is assumed that the proposed legislation will result in one additional first degree murder conviction every five years.
- Population growth will not affect these admissions.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving 51 years (18,627.75 days) for an annualized cost of \$264,812 [$(\$71.08 \times 18,627.75 \text{ days}) / 5$].

Aggravated Rape

- Under Tenn. Code Ann. § 39-13-503, aggravated rape is the act of rape accompanied by certain circumstances (e.g., using a deadly weapon or causing bodily injury). The proposed legislation adds two circumstances to the offense—(1) the defendant knew or had reason to know the victim is an elderly adult, and (2) the penetration is

accomplished by a caregiver or by an individual providing services to the victim who is paid by either the victim or by a third party for the benefit of the victim.

- The proposed legislation will result in some current rape admissions being enhanced from a class B felony to a class A felony.
- Aggravated rape is a class A felony for which a person must serve at least 85 percent of the sentence received.
- Statistics from the DOC show that the average sentence received for aggravated rape is 22.42 years. The minimum time a person convicted of aggravated rape must serve is 19.06 years (22.42×0.85).
- Statistics from the DOC show that the average time served for rape is 10.78 years. The proposed legislation will result in each offender serving an additional 8.28 years ($19.06 - 10.78$).
- It is assumed that the proposed legislation will result in one additional admission each year for aggravated rape of an elderly or vulnerable adult.
- Population growth will not affect these admissions.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender per year serving 8.28 years (3,024.27 days) at a cost of \$214,965 ($\$71.08 \times 3,024.27$ days).

Aggravated Sexual Battery

- Under Tenn. Code Ann. § 39-13-504, aggravated sexual battery is the act of sexual battery accompanied by certain circumstances (e.g., using a deadly weapon or causing bodily injury). The proposed legislation adds two circumstances to the offense—(1) the defendant knew or had reason to know the victim is an elderly adult, and (2) the unlawful sexual conduct is accomplished by a caregiver or by an individual providing services to the victim who is paid by either the victim or by a third party for the benefit of the victim.
- The proposed legislation will result in some current sexual battery (class E felony) admissions being enhanced to class B felonies.
- Aggravated sexual battery is a class B felony for which a person must serve at least 85 percent of the sentence received.
- Statistics from the DOC show that the average sentence received for aggravated sexual battery is 10.51 years. The minimum time a person convicted of aggravated rape must serve is 8.93 years (10.51×0.85).
- Statistics from the DOC show that the average time served for sexual battery is 1.41 years. The proposed legislation will result in each offender serving an additional 7.52 years ($8.93 - 1.41$).
- It is assumed that the proposed legislation will result in two additional admissions each year for aggravated sexual battery of an elderly or vulnerable adult.
- Population growth will not affect these admissions.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders serving 7.52 years (2,746.68 days) for a cost of \$195,234 ($\$71.08 \times 2,746.68$ days). The total cost for two offenders is \$390,468 ($\$195,234 \times 2$).

Total Increase in State Incarceration Costs

- The proposed legislation will increase state incarceration costs by a net total of \$3,125,818 [(\$1,583,680 + \$34,010 + \$28,385 + \$26,914 + \$558,180 + \$68,020 + \$264,812 + \$214,965 + \$390,468) increases – (\$21,808 + \$21,808) decreases].

Courts, District Attorneys, and Public Defenders

- The proposed legislation only creates a few new felony cases per year. It mainly impacts sentencing of existing cases. It is assumed that the District Attorneys General Conference, the District Public Defenders Conference, and the courts can accommodate the impact to their caseloads within existing resources without an increased appropriation or reduced reversion.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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